

THE STATE OF IDAHO, UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,
UNITED STATES DEPARTMENT OF ENERGY

IN THE MATTER OF:)	
)	
MARCH 16, 2001 STATEMENT OF)	AGREEMENT TO RESOLVE DISPUTES
DISPUTE)	
)	
THE U.S. DEPARTMENT OF ENERGY)	
IDAHO NATIONAL ENGINEERING AND)	
ENVIRONMENTAL LABORATORY,)	
IDAHO FALLS, IDAHO,)	
_____)	

1. INTRODUCTION

1.1 This "Agreement to Resolve Disputes" (Agreement) is a settlement of a dispute arising under the 1991 Federal Facility Agreement and Consent Order (FFA/CO) at the Idaho National Engineering and Environmental Laboratory (INEEL) related to the Record of Decision for OU 7-10 as amended (Pit 9). The parties to this Agreement (the parties) are the U.S. Environmental Protection Agency (EPA), the State of Idaho (Idaho) and the U.S. Department of Energy (DOE).

1.2 The dispute involves DOE's request to extend deadlines for the submission of primary documents for Operable Unit (OU) 7-10 (Pit 9), as reflected in a February 26, 2001 letter. On March 4, 2001, the Idaho Department of Environmental Quality (DEQ) and EPA denied DOE's request.

1.3 The parties have resolved this dispute by agreement, which includes: (1) a settlement payment; (2) revised deadlines for Operable Unit 7-10; (3) revised deadlines for Operable Unit 7-13/14; and (4) a financial assurance mechanism to assist in assuring compliance with the revised schedule for OU 7-10.

1.4 This Agreement sets forth a general summary of events for Pit 9 and explains the basis for the resolution of the dispute and for the agreement on revised deadlines.

1.5 This Agreement is limited to the dispute arising from DOE's February 26, 2001 request for extension. Nothing in this Agreement shall be construed to affect or relate to any other disputes between the parties hereto, including but not limited to any disputes related to the ultimate remedy for OU 7-13/14 or the terms and conditions of the 1995 Settlement Agreement in the consolidated case, *Public Service Company of Colorado v. Batt*, CV-91-0035-S-EJL and CV-91-0054-S-EJL. This Agreement shall not be admissible in any proceedings other than for enforcement of this Agreement.

1.6 This Agreement amends the FFA/CO solely as it relates to OU 7-10 and OU 7-13/14.

1.7 This Agreement supersedes the requirements of the Memorandum Decision and Order dated July 23, 2001 issued by Director C. Stephen Allred as set forth on page 18 of said Memorandum Decision and Order.

2. BACKGROUND

2.1 On December 9, 1991, EPA, Idaho and DOE entered into a FFA/CO for the investigation and cleanup of INEEL. The FFA/CO was entered into pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. § 9601 et seq., the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6901 et seq., and the Hazardous Waste Management Act, Idaho Code § 39-4401, et seq.

2.2 The FFA/CO establishes requirements for: (a) identification and performance of interim cleanup actions, (b) performance of investigations to determine fully the nature and extent of threats to public health or welfare or the environment caused by releases of hazardous substances, (c) performance of studies to identify, evaluate and select cleanup actions, (d) implementation of selected cleanup actions and (e) compliance with federal and state hazardous waste laws.

2.3 The INEEL site is divided into ten waste area groups (WAGs). Each WAG contains several operable units. The operable units generally cover specific geographic areas at the site.

2.4 The FFA/CO designates certain documents as "primary documents." Under the FFA/CO, a primary document is subject to a stipulated penalty if it is not submitted by the established deadline. The stipulated penalty is up to \$5,000 for the first week and up to \$10,000 for each week thereafter that the document is not submitted or deemed sufficient. Under the FFA/CO a Remedial Design (RD) and a Remedial Action Work Plan (RA Work Plan) are "primary documents."

2.5 The FFA/CO provides that DOE may request an extension to a deadline for submission of a primary document. DOE must show "good cause" for the requested extension. Examples of good cause are set forth in paragraph 13.2 of the FFA/CO, including any event mutually agreed to by the parties as constituting good cause. If EPA and Idaho agree that good cause has been established by DOE, the deadline is extended and a penalty is not assessed for the period corresponding to the good cause. In the absence of good cause for all or part of a requested extension, the request for an extension would be denied and a stipulated penalty assessed under the FFA/CO for any delays in meeting the deadline.

2.6 Pit 9, located at the Radioactive Waste Management Complex in the southwestern portion of INEEL, was operated as a waste disposal pit from November 1967 to June 1969. Pit 9 is approximately an acre in size and is an average of 17.5 feet deep. The waste disposed of in Pit 9 includes transuranic (TRU) waste generated at the Rocky Flats Plant in Colorado, as well as low-level radioactive waste and miscellaneous chemical wastes generated at INEEL.

2.7 The Record of Decision (ROD) for Pit 9, dated September 1993, required performance of an interim action to excavate and treat buried waste that contains greater than 10 nanocuries of transuranic isotopes per gram of waste. Retrieval and treatment of buried mixed TRU waste has not yet been effectively performed on a large-scale at INEEL or at any other DOE facility across the country. The parties intend that information acquired as a result of the cleanup of Pit 9 will be used for the cleanup of the TRU-contaminated Pits and Trenches area of the site, Operable Unit 7-13/14, e.g., to evaluate remedial alternatives. The Pit 9 wastes are required to be treated to remove radionuclides and other hazardous constituents and to reduce the toxicity, mobility and/or volume of the wastes.

2.8 The retrieval and treatment of heterogeneous, buried mixed TRU waste in a safe and efficient manner is a complex, technical challenge. Excavation, segregation and treatment require different technologies that need to be integrated with each other, capable of remote operation (i.e., no direct human contact with the hazardous/radioactive material) and effective at minimizing the amount of radioactive material that will require management outside Pit 9. Adding to the technological complexity is that, while the spatial distribution and amounts and types of wastes in Pit 9 are generally known from Rocky Flats shipping records and probing, the physical condition of the waste cannot be specifically confirmed until the actual retrieval of wastes from Pit 9 begins.

2.9 Deadlines for submission of primary documents for Pit 9 were established in the revised RD/RA Scope of Work (SOW) dated January 1995. The original deadlines for submission of the RD was January 8, 1995, and for submission of the RA Work Plan was February 22, 1996.

2.10 In January 1996, design documents were provided by DOE to EPA and Idaho. DOE acknowledged, however, that the full remedial design had not been timely submitted by its contractor.

2.11 In January 1996, DOE requested extensions to the deadlines for submission of the RD and RA Work Plan. DOE asserted that good cause for the extensions was the highly complex nature of the design, the revised technical approach, the aggressive project schedule, the nature of the fixed-price subcontract and the limited ability of DOE to influence the subcontractor.

2.12 EPA and Idaho responded that DOE had not demonstrated good cause for an extension.

2.13 DOE initiated informal dispute resolution pursuant to paragraph 9.1 of the FFA/CO.

2.14 DOE's 1996 request for extension was ultimately resolved by an Agreement dated March 18, 1997, negotiated during the informal dispute resolution period, which included the following terms:

- 2.14.1 The enforceable deadline for submittal of a draft revised Remedial Design/Remedial Action Scope of Work (RD/RA SOW) for Pit 9 was reestablished as September 30, 1997.
- 2.14.2 New deadlines for submission of the Remedial Design and the Remedial Action Work Plan were to be established in the approved RD/RA SOW.
- 2.14.3 A penalty was assessed for the period of delay for the Remedial Design from January 8, 1996 to September 30, 1997 (90 weeks).
- 2.14.4 A penalty was assessed for the period of delay for the Remedial Action Work Plan from February 22, 1996 to September 30, 1997 (84 weeks).
- 2.14.5 EPA and Idaho agreed that good cause had been demonstrated for 40 weeks of delay related to the Remedial Design and 39 weeks of delay related to the Remedial Action Work Plan.
- 2.14.6 The parties agreed to the sum of the stipulated penalties under the FFA/CO for a 50-week delay in submitting the Remedial Design and a 45-week delay in submitting the Remedial Action Work.
- 2.14.7 DOE agreed to the payment of a stipulated penalty in the amount of \$100,000 to EPA pursuant to part XI of the FFA/CO.
- 2.14.8 DOE further agreed to the payment of \$840,000 in the form of Supplemental Environmental Projects.
- 2.14.9 The parties also agreed that information from the Pit 9 demonstration project would be used in the baseline risk assessment (BRA), remedial investigation/feasibility study (RI/FS) and ROD for the remaining Pits and Trenches, Operable Unit 7-13/14. Such information would include information on the contents of Pit 9, e.g., contaminant migration and container integrity, and the performance, effectiveness and cost of the cleanup technologies employed at Pit 9. Accordingly, the parties agreed to extend these deadlines to allow for Pit 9 information to be available for evaluation in the 7-13/14 BRA, RI/FS and ROD.

2.15 In October 1997, DOE submitted the agreed upon RD/RA Scope of Work (SOW) and Remedial Design Work Plan.

2.16 The revised RD/RA SOW set forth two paths for completion of the Pit 9 ROD. The first path contemplated the continued implementation of the Lockheed Martin Advance Environmental Systems (LMAES) subcontract for Pit 9.

2.17 The second path, which became known as the "Alternative Path Forward," was contingent upon termination for cause of the LMAES subcontract for Pit 9. In the event the subcontract was terminated, DOE proposed a three stage, phased interim action and provided a schedule for implementation of the "Alternative Path Forward" as follows:

2.17.1 Stage I of the alternative path for Pit 9 involved a sampling phase which in part would be used for determining location of the Stage II effort within the Pit 9 area and was to be completed by July 2000 (Stage I Report).

2.17.2 Stage II of the alternative path for Pit 9 involved the excavation and retrieval of transuranic waste from a 20' x 20' area within Pit 9. DOE was required to submit a Remedial Action (RA) Report at the conclusion of this demonstration stage by no later than April 2003 (Draft Stage II RA Report). This report would describe how the cleanup objectives established by the Record of Decision were met.

2.17.3 Stage III of the alternative path for Pit 9 was to involve the full-scale excavation and retrieval of TRU waste in the entirety of Pit 9. The Stage III Remedial Design was to include plans and specifications for a full-scale retrieval facility at Pit 9 and was due by April 2003 (Draft Remedial Design Stage III).

2.17.4 The Stage III Remedial Action Work Plan and Operation and Maintenance Plan was to be a document that provided a schedule for waste removal and details of cleanup field operations in the entirety of Pit 9 and was due on September 2003 (Draft Stage III RAWP & O&M Plan).

2.18 On June 1, 1998, DOE's M&O contractor LMITCO terminated the LMAES subcontract for cause.

2.19 Thereafter it was determined to pursue the "Alternative Path Forward" as set forth in the October 1997 revised RD/RA SOW.

2.20 Since June 18, 1998, the parties have pursued and implemented portions of the Alternative Path Forward as reflected in the revised RD/RA SOW.

2.21 On February 26, 2001, DOE requested extensions of the Pit 9 Project schedule of approximately 88 to 149 months. The Pit 9 Project dates, as revised by the 1997 Agreement to Resolve Disputes, are set forth below in paragraph 2.21.1. DOE's requested dates for submittal of primary documents are set forth below in paragraph 2.21.2.

2.21.1 Dates Revised Per 1997 Agreement:

April 2003 (Draft Stage II RA Report);

April 2003 (Draft Remedial Design Stage III);

September 2003 (Draft Stage III RAWP & O&M Plan).

2.21.2 DOE's Requested Extensions:

August 2010 (Draft Stage II RA Report);

August 2013 (Draft Remedial Design Stage III);

February 2016 (Draft Stage III RAWP & O&M Plan).

2.22 DOE based its February 26, 2001 request for extension on the asserted "difficulty of designing, constructing and operating the complex nuclear facility required for Stage II of OU 7-10."

2.23 On March 4, 2001, DEQ and EPA denied DOE's request for extension.

2.24 On March 16, 2001, DOE invoked formal dispute resolution under paragraph 9.1 of the FFA/CO over DEQ and EPA's denial.

2.25 On March 27, 2001, DEQ's representative on the Dispute Resolution Committee (DRC) recommended that this dispute be elevated immediately to the Senior Executive Committee (SEC). EPA and DOE's representatives concurred in this recommendation.

2.26 On July 23, 2001, DEQ Director C. Stephen Allred issued a Memorandum Decision and Order addressing the Dispute pursuant to paragraph 9.2(f) of the FFA/CO.

2.27 Director Allred's decision concluded the schedule delays encountered since the 1997 Agreement to Resolve Disputes and proposed in DOE's request for extension did not form the basis of good cause. Director Allred ordered DOE to identify the schedule and cost basis necessary to meet the objectives of Stage II and submit a draft RA Report by April 2003. Director Allred further ordered DOE to submit semi-annual progress reports on its work toward meeting the objectives of the Pit 9 ROD.

2.28 On September 5, 2001, representatives of DOE, EPA and Idaho met in Boise to negotiate resolution of the Pit 9 dispute. At this meeting DOE proposed a new simplified technical approach to Phase II of the Pit 9 project. This new approach is referred to as the "Glovebox Excavator Method" and provides for more expeditious completion of Stage II than was proposed in DOE's February 26, 2001 request for extension. Under this revised approach

DOE anticipates completion of Stage II by no later than October 2004. EPA and Idaho generally concurred in this new technical approach.

2.29 At the September 5, 2001 meeting DOE, EPA and Idaho also agreed to work to establish new milestones for the new technical approach. Those milestones were subsequently tentatively agreed to by the end of September 2001, as set forth in paragraph 3.1 below. After a series of subsequent negotiations, however, the parties did not reach agreement on issues of payment of penalty, adequate assurance of future performance, impacts to Stage III schedules and impacts to the schedule for the OU 7-13/14 Record of Decision.

2.30 On December 14, 2001, DOE elected to elevate Director Allred's Memorandum Decision and Order to the Governor of Idaho for final dispute resolution pursuant to paragraph 9.2(f) of the FFA/CO.

2.31 It is undisputed that DOE will be unable to meet the deadline for submission of a Draft Remedial Action Report by April 2003 as set forth in the revised RD/RA SOW dated October 1997.

2.32 This Agreement is executed by the Governor of Idaho, the Secretary of Energy and the Administrator of EPA and resolves those matters related to DOE's February 26, 2001 request for extension of deadlines.

AGREEMENT

3. The parties hereby agree to the following terms and conditions to resolve the dispute.

3.1 Pit 9 Stage II Schedule & Submittals: All existing enforceable milestones related to Stage II of Pit 9 as set forth in the Revised RD/RA SOW dated October 1997 and incorporated by reference in the Pit 9 Record of Decision as amended by the September 1998 Explanation of Significant Differences are hereby superseded and replaced by the following enforceable milestones.

- 3.1.1 Submit Notification of Critical Decision 1 (approval of DOE-ID Acquisition Executive to proceed from conceptual design to preliminary design), which DOE submitted to Idaho and EPA on February 15, 2002.
- 3.1.2 Submit Notification of Critical Decision 2/3 (approval of DOE-ID Acquisition Executive to proceed to procurement and construction phase) by no later than August 30, 2002.
- 3.1.3 Submit Stage II Remedial Design (completed project design) by no later than October 31, 2002. Idaho and EPA will have 25 days to review the Stage II Remedial Design.
- 3.1.4 Commence construction of Stage II by no later than November 30, 2002 and submit notification to DEQ and EPA of commencement of

construction. "Commencement of construction" shall be defined as "substantial continuous onsite physical construction."

- 3.1.5 Submit Notification of Critical Decision 4 (approval of DOE-ID Acquisition Executive to proceed into operations phase) by no later than February 28, 2004.
- 3.1.6 Commence Stage II excavation by no later than March 31, 2004 and submit notification to DEQ and EPA of Commencement of Stage II excavation. "Commencement of Stage II excavation" shall be defined as substantial continuous onsite physical waste retrieval and packaging operations.
- 3.1.7 Complete Stage II excavation by no later than October 31, 2004 and submit notification of Completion of Stage II excavation to DEQ and EPA. Within 60 days of the final inspection of the Stage II excavation, DOE shall submit a Draft Remedial Action Report (RA Report) to Idaho DEQ and EPA pursuant to the FFA/CO.

3.2 Pit 9 Stage III Schedule & Submittals: All existing enforceable milestones related to Stage III of Pit 9 as set forth in the Revised RD/RA SOW dated October 1997 and incorporated by reference in the Pit 9 Record of Decision as amended by the September 1998 Explanation of Significant Differences are hereby superseded and replaced by the following enforceable milestones.

- 3.2.1 A new enforceable deadline for the submittal of a Pit 9 Stage III 10% design is hereby established. DOE shall submit a Stage III 10% Design by September 2005. The Stage III 10% Design shall be considered a primary document under the FFA/CO.
- 3.2.2 DOE shall complete the Remedial Design for Stage III and commence construction of Stage III by no later than March 31, 2007.
- 3.2.3 DOE shall commence Stage III operations by no later than thirty-six months after commencement of construction under paragraph 3.2.2.

3.3 WAG 7, OU 7-13/14 Schedule and Submittals. All existing enforceable milestones related to WAG 7, Operable Units 7-13/14 as set forth in the revised RI/FS Scope of Work and RI/FS Workplan dated October 1997 and incorporated by reference in the FFA/CO are hereby superseded and replaced by the following enforceable milestones.

- 3.3.1 DOE shall submit a Pre-Draft Remedial Investigation and Baseline Risk Assessment by no later than April 30, 2002. This Pre-Draft RI/BRA shall be subject to paragraphs 8.12 through 8.16 of the FFA/CO, including the requirement to respond in writing to all written comments, but DOE shall not submit a Draft Final document as provided in paragraph 8.16. The

Pre-Draft RI/BRA will not be subject to any further document finalization process as set forth in paragraphs 8.16 through 8.24 of the FFA/CO until such time as it is submitted as a Draft RI/BRA pursuant to paragraph 3.3.2 of this Agreement, at such time it will be subject to the full requirements of part VIII of the FFA/CO.

- 3.3.2 DOE shall submit a Draft Remedial Investigation and Baseline Risk Assessment by no later than August 31, 2005. The Draft RI/BRA shall be considered a primary document under the FFA/CO.
- 3.3.3 DOE shall submit a Draft Feasibility Study based on the approved RI/BRA by no later than December 31, 2005. The Draft FS shall be considered a primary document under the FFA/CO.
- 3.3.4 DOE shall submit a Draft Proposed Plan by no later than March 31, 2006.
- 3.3.5 DOE shall submit the Draft ROD for WAG 7 by no later than December 31, 2006.
- 3.3.6 The parties recognize that the ROD for WAG 7 may alter activities called for by the 1993 ROD for Pit 9 that have not been completed or initiated by the time the ROD for WAG 7 is issued.

3.4 Financial Assurance: DOE shall establish a financial assurance mechanism as follows:

- 3.4.1 No later than October 31, 2002, DOE shall establish a reserve account to be held by DOE.
- 3.4.2 DOE shall deposit in the reserve account the sum of Five Million Dollars (\$5,000,000).
- 3.4.3 The monies deposited in the reserve account shall be held until such time as DEQ and EPA authorize the release of funds as specified below or until forfeiture of said funds as set forth below:
- 3.4.4 Release or Forfeiture of Reserve Funds:
 - 3.4.4.A. Stage II Milestone No. 4 (paragraph 3.1.4):
 - i. In the event DOE meets Stage II Milestone Number 4 by Commencing Construction of Stage II by November 30, 2002 and submitting notification to DEQ and EPA of commencement of Construction, DEQ and EPA shall authorize the release of One Million Dollars (\$1,000,000) to DOE to be used to fund work related to Pit 9.

- ii. In the event DOE fails to meet Stage II Milestone Number 4 by Commencing Construction of Stage II by November 30, 2002 and submitting notification to DEQ and EPA of commencement of Construction, DOE shall forfeit the sum of One Million Dollars (\$1,000,000) to a trust held by the State of Idaho to be used to fund Supplemental Environmental Projects as set forth in paragraph 3.6 of this Agreement.

3.4.4.B. Stage II Milestone No. 6 (paragraph 3.1.6):

- i. In the event DOE meets Stage II Milestone Number 6 by commencing Stage II Excavation by March 31, 2004, and submitting notification to DEQ and EPA of Commencement of Stage II Excavation, DEQ and EPA shall authorize the release of Two Million Dollars (\$2,000,000) to DOE to be used to fund work related to Pit 9.
- ii. In the event DOE fails to meet Stage II Milestone Number 6 by commencing Stage II Excavation by March 31, 2004 and submitting notification to DEQ and EPA of Commencement of Stage II Excavation, DOE shall forfeit the sum of Two Million Dollars (\$2,000,000) to a trust held by the State of Idaho to be used to fund Supplemental Environmental Projects as set forth in paragraph 3.6 of this Agreement.

3.4.4.C. Stage II Milestone No. 7 (paragraph 3.1.7):

- i. In the event DOE meets Stage II Milestone Number 7 by completing Stage II Excavation by October 31, 2004 and submitting notification of completion of Stage II Excavation to DEQ and EPA, DEQ and EPA shall authorize the release of Two Million Dollars (\$2,000,000) to DOE to be used to fund work related to Pit 9.
- ii. In the event DOE fails to meet Stage II Milestone Number 7 by completing Stage II Excavation by October 31, 2004 and submitting notification of completion of Stage II Excavation, DOE shall forfeit the sum of Two Million Dollars (\$2,000,000) to a trust held by the State of Idaho to be used to fund Supplemental Environmental Projects as set forth in paragraph 3.6 of this Agreement.

3.4.5 The reserve of funds or any forfeiture of sums as set forth above shall not constitute an excuse for failure to meet any milestones related to the

revised schedule for Pit 9 or any other deadlines established by this Agreement and/or the FFA/CO.

3.5 Payment in Settlement of the Dispute. The parties agree that DOE shall pay the amount of \$800,000 in settlement of the current dispute. Payment shall be made as follows:

3.5.1 Within 90 days of the effective date of this Agreement, DOE shall make a payment in the amount of \$800,000 to Idaho to be administered pursuant to paragraph 3.6 of this Agreement. The payment shall be made by electronic funds transfer.

3.6 Supplemental Environmental Projects (SEPs). The parties agree that all monies paid in trust to Idaho pursuant to paragraphs 3.4.4.A.ii, 3.4.4.B.ii, 3.4.4.C.ii or paragraph 3.5 shall be used to fund SEPs as follows:

3.6.1 All monies shall be deposited in a Trust Fund account that will be invested to accrue interest to the Trust Fund in accordance with Idaho Code § 67-1210.

3.6.2 The parties to this Agreement, or their successors or designees, shall be the trustees of the Trust Fund and shall be authorized and empowered, consistent with this Agreement, upon unanimous agreement of all three parties, to direct expenditures of monies from the Trust Fund to fund SEPs. Each party shall designate a person to represent that party as trustee and, within ten days of the effective date of this Agreement, each party shall notify the other parties of the name of the person who has been so designated.

3.6.3 SEPs, for the purpose of this Agreement, shall be projects or portions thereof which are consistent with the general purposes for which the funds were appropriated by protecting the public and the environment in Idaho by preventing pollution, reducing the amount of pollution reaching the environment, or enhancing, restoring or maintaining the quality of an environmental resource impacted by DOE's activities. In evaluating proposed SEPs, the trustees may give preference to projects that restore, enhance or maintain water quality or riparian habitat related to the Snake River Plain Aquifer, the Snake River or its tributaries.

3.6.4 The intent of the parties is to approve the disbursement of all monies in the Trust Fund within one year from the date that DOE transfers the \$800,000 amount to Idaho or within one year of the forfeiture of any sums under paragraphs 3.4.4.A.ii, 3.4.4.B.ii or 3.4.4.C.ii. The party primarily responsible for implementing or overseeing each SEP will be determined at the time that funds are approved for that SEP.

3.6.5 Any party may issue appropriate press releases or public statements describing the SEPs funded by the Trust Fund provided, however, that any such press releases or public statements shall include the following

language: "This project was undertaken in connection with settlement of a dispute regarding the Pit 9 project required by the INEEL FFA/CO."

- 3.6.6 Disputes regarding the performance of the SEP shall be resolved in accordance with the procedures set forth in part IX of the FFA/CO.

3.7 Funding of State Oversight Costs.

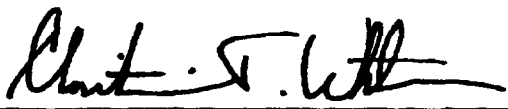
- 3.7.1 DOE agrees to provide additional funding through completion of Stage II (i.e., submittal of the Draft RA report under paragraph 3.1.7 of this Agreement), not to exceed \$100,000 per year, to supplement Idaho DEQ's existing grant amount for state oversight of INEEL remediation to fund the State's oversight of DOE's compliance with the terms of this Agreement under the grant procedures of part XIV.B of the FFA/CO, "IDHW Expense."

3.8 General Provisions

- 3.8.1 In the event that DOE fails to comply with any provision of this Agreement, EPA and Idaho reserve the right to pursue any remedy available under the FFA/CO and those remedies reserved under part XXXI of the FFA/CO unless otherwise specified herein.
- 3.8.2 The parties agree that this Agreement resolves all disputed matters relating to DOE's requests for extensions of time for Pit 9 and EPA's and Idaho's denials thereof. EPA and Idaho agree that they will not compel compliance or assess stipulated penalties with respect to previous deadlines that have been superseded by this Agreement.
- 3.8.3 Deliverables to be submitted pursuant to the deadlines set forth in this Agreement shall be developed in accordance with the process and requirements described in the FFA/CO, including its attachments, except as specified in this Agreement. Unless otherwise specified herein, primary and secondary documents remain as designated in the FFA/CO.
- 3.8.4 The deadlines set forth in this Agreement shall be subject to stipulated penalties in accordance with part XI of the FFA/CO except for the deadlines set forth in paragraphs 3.1.1 through 3.1.7 and paragraphs 3.4.4.A through 3.4.4.C.
- 3.8.5 Compliance with this Agreement shall not affect performance of all other requirements under the FFA/CO.
- 3.8.6 DOE will use best efforts to employ adequate management controls to ensure timely performance of requirements under this Agreement and the FFA/CO.

- 3.8.7 No provisions of this Agreement shall be interpreted to require obligation or payment of funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341.
- 3.8.8 Nothing in this Agreement shall constitute an admission on the part of the parties, in whole or part, in any proceeding except in a proceeding to enforce this Agreement.
- 3.8.9 The effective date of this Agreement shall be the date on which it has been signed by all three signatories.
- 3.8.10 EPA, Idaho and DOE individually certify that the signatories to this Agreement have the authority to bind their respective agencies to the requirements of this Agreement.

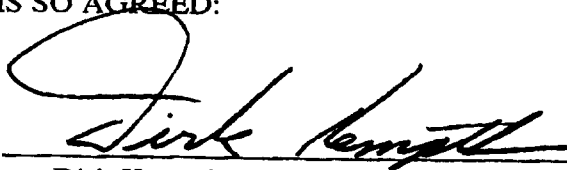
IT IS SO AGREED:

By: 
Christine Todd Whitman, Administrator
U.S. Environmental Protection Agency

Date: 4/17/02

IT IS SO AGREED:

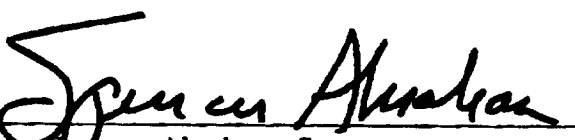
By:


Dirk Kempthorne, Governor
State of Idaho

Date:

April 18, 2002

IT IS SO AGREED:

By: 

Spencer Abraham, Secretary
U.S. Department of Energy

Date: April 16, 2002